

**OFFICIAL**

Revision: HCFA-PM-95-3 (MB)  
May 1995

Attachment 4.17-A  
Page 1

**STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT**

State/Territory: RHODE ISLAND

**LIENS AND ADJUSTMENTS OR RECOVERIES**

1. The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:

*Not Applicable.*

2. The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):

*Not Applicable.*

3. The State defines the terms below as follows:

- o estate
- o individual's home
- o equity interest in the home
- o residing in the home for at least one or two years on a continuous basis, and
- o lawfully residing.

*Not Applicable.*

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Revision: HCFA-PM-95-3 (MB)  
May 1995

Attachment 4.17-A  
Page 2

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State/Territory: RHODE ISLAND

**LIENS AND ADJUSTMENTS OR RECOVERIES**

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**4. The State defines undue hardship as follows:**

An undue hardship may be found to exist and execution of the lien may be postponed if a sale of real property, in the case of an individual's home, would be required to satisfy a claim, if all of the following conditions are met.

- 1) an individual was using the property as a principal place of residence on the date of the recipient's death; and,
- 2) that individual resided in the decedent's home on a continual basis for at least twenty-four (24) months immediately prior to the date of the deceased recipient's death; and,
- 3) that individual has, from the time the Department first presented its claim for recovery against the deceased recipient's estate and after, annual gross income in an amount not to exceed 250 percent of the then applicable federal poverty level (FPL) income standard based on the same family size, and assets not to exceed the then applicable Medically Needy resource standards (see section 0338.05).

In addition to the foregoing criteria, undue hardship will be determined by the Department on a case-by-case basis and will include, but will not be limited to, the following examples, e.g., the individual or self, on whose behalf the heir(s) or beneficiary(ies) is requesting a consideration of undue hardship, would:

- A. be rendered homeless without the resources to find suitable housing; or,
- B. lose his/her means of livelihood; or,
- C. be deprived of food, clothing, shelter, or medical care such that life would be endangered should a finding of undue hardship be denied.

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OFFICIAL

Revision: HCFA-PM-95-3 (MB)  
May 1995

Attachment 4.17-A  
Page 3

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State/Territory: RHODE ISLAND

**LIENS AND ADJUSTMENTS OR RECOVERIES**

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

If an individual meets the above criteria, the heir(s) or beneficiary(ies) may submit a request to the Department of Human Services, TPL Unit for consideration of undue hardship and the delay of the execution of the Department's lien against the property if it appears that the individual is able to continue to reside in the property.

Requests for consideration of undue hardship will be reviewed by a team of three members therein designated by the Director of the Department of Human Services, of which one member will be from the DHS Office of Legal Services. The review team will render decisions by giving due consideration to the equities involved as well as the obligations of the parties involved.

If the Department finds that an undue hardship exists, the execution of the lien is delayed for as long as:

- the undue hardship grantee is alive and residing in the property; and has income and assets not to exceed the amounts specified in Section 0312.40.
- the undue hardship circumstances upon which the decision is based continue to exist; and,
- as long as the property is adequately maintained and continues to exist in its then current state, (e.g., if the structure is destroyed by fire, the lien will be executed against the real estate if it appears that the home will not be rebuilt).

The circumstances of the hardship will be subject to review by the Department at least every two years provided, however, that the grantee must notify the Department of any material change in circumstances, income and/or assets.

If the owner of the property sells or transfers ownership of the home, the Department of Human Services will execute the lien.

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<u>TN No.</u>		

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State/Territory: RHODE ISLAND

LIENS AND ADJUSTMENTS OR RECOVERIES

6. **The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):** If probate assets recorded in the case record exceed \$3,000 at time of last recertification or if they include real estate, then recovery efforts are initiated upon notification of death.
7. **The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):**
  - A. The TPL Unit initiates estate recoveries upon receipt of information (from internal or external sources) relative to the death of a Medical Assistance recipient who was at least 55 years of age, and responds to requests from estate representatives to release and/or discharge liens upon payment of reimbursable amounts or upon determination by the TPL Unit that a lien is inapplicable.
  - B. The TPL Unit does not automatically file an encumbrance in the land evidence records. It is DHS' policy not to encumber the chain of title to real estate until the DHS claim is contested by the legal representatives of the estate, or until it appears that the legal representatives of the estate are unresponsive to the TPL Unit's inquiries or claims.
  - C. Usually, the recovery process begins with a letter to the next of kin or legal representatives requesting estate asset information. In most cases, there are no assets left after payment of funeral expenses and other preferred debts (R.I.G.L. 33-12-11), and no recovery is pursued by DHS. If requested, the TPL Unit will issue a discharge of lien. If there are any assets remaining to pay the DHS claim, in whole or in part, the TPL Unit will request reimbursement by letter which provides an accounting of the Medical Assistance expenditures. Upon receipt of payment, the TPL Unit will issue a discharge of lien.

TN No. 98-004

Effective Date 4/1/98

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TN No.

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LIENS AND ADJUSTMENTS OR RECOVERIES

- D. If DHS is notified of the pendency of a probate estate either in response to a written notice from the executor/administrator, (see In Re: Estate of Santoro, 572 A. 2d 298, R.I. (1990) and R.I.G.L. 33-11-5.1 for notice to creditor requirements), the TPL Unit will file a formal claim in the estate. Land evidence lien notices are not normally filed at this time (see B. above). Lien notices are filed in the land evidence records if the claim is contested.
- E. In accordance with R.I.G.L. 40-8-15(b), and R.I.G.L. 33-11-5.1, legal representatives and/or the heirs-at-law of the decedent are required to provide to the DHS, TPL Unit, within sixty (60) days of the date of death, written notice identifying the decedent, the assets included in the individual's probate estate, the social security number and date of birth of the decedent, and the names and addresses of all persons interested in, or entitled to take any share of the individual's probate estate.

A requestor shall mail his or her application for an undue hardship consideration in writing to the Department within 45 days after the date the Department has filed its claim with probate court. The application shall include the following information:

1. the relationship of the undue hardship applicant to the decedent and copies of documents establishing that relationship; and,
2. the basis for the application and documentation supporting the undue hardship applicant's position; and,
3. supporting documentation that the requestor has the legal standing and will be allowed to continue to reside in the property indefinitely should the undue hardship request be approved.

The Department may require additional documentation, such as a current title examination, a list of existing creditors, etc. as adequate proof that its decision to defer its lien will not otherwise adversely affect its claim.

The Department shall review each application and issue a written decision within 90 days after the application was received by the Department. The Department shall consider and base its decision on all information received with the application and any independent investigation it may undertake. The decision shall be the final decision of the Department.

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